

Sales to exempt organizations are subject to sales tax unless the organization has obtained an active exemption identification number ("E" number) from the Department. See 86 Ill. Adm. Code 130.2080. (This is a GIL.)

April 29, 2008

Dear Xxxxx:

This letter is in response to your letter dated July 10, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Our company was recently audited by the Illinois Department of Revenue. Based on this audit our company needs to make a couple changes to our current sales tax procedures. The Audit Supervisor overseeing this audit, has given us his opinion on how to remain in full compliance in the future, but in some cases he recommends that we request an opinion from your division.

The first of three questions Audit Supervisor suggested we ask follows: **'What exemption certificates can our company accept as a seller of liquid propane in Illinois?'** We get many requests for our sales of liquid propane to be treated as a sales tax exempt transaction. If such requests are supported by an exemption certificate that appears to be valid, do we have an obligation to investigate the applicability of the claim in relation to the use of our product?

The second question relates to the home rule municipal retailers' occupation tax. I have read Title 86 Part 270 Section 270.115 of the Regulations and have a specific question as it relates to our company. Our company has recently merged some of our locations. Before the mergers, each location accepted orders at its physical address and collected sales tax based on the rate in effect at the location where the order was accepted. After the merger, the closed location has limited staff at that location only occasionally during business hours. The location will also have a phone number that rings into the closed

location and if no one is available at the time a call comes in, it will 'roll over' to the phone at our main location. **Am I correct with the following ideas?**

- A. If the call is actually answered in the closed location and a sale is accepted at that time, we should charge sales tax at the proper rate for that location. We should properly document that the call was received in the closed location.
- B. If the customer calls the phone number for our closed location but the call 'rolls over' to our main location and a sale is accepted at that time, we should charge sales tax at the proper rate for the main location. This should be done even though the customer may think he is talking to someone at the closed location, since he called the phone number for that location.

The third question we have relates to how we treat transactions where the customer takes our early payment discount on propane. Our policy has been to issue the bill at the gross amount with the sales tax based on the gross bill. The customer then has the option to pay the bill within 15 days and take an early pay discount, which has recently been 10 cents per gallon. The discount given to the customer was previously 10 cents times the gallons without an adjustment made to the sales tax due. In other words, the customer remitted a payment that included sales tax based on the gross selling price. Unless the customer complained that they should have been billed for a smaller amount of sales tax, no adjustment was made to the sales tax collected. When we completed our sales tax return, we remitted sales tax based on the discounted sales amount. The thought process was that the 10 cent discount includes the change in sales tax and this is how it is presented to our customer, but only orally, not in writing. Upon audit, the auditors proposed an adjustment to require remittance of 'excess tax collected' based on the original gross invoice amount. **However, your auditors' opinion was that a statement on future sales tickets of 'Discount Includes Sales Tax' will be sufficient to remedy our 'excess tax collection' problem. We would like a ruling by your department to confirm this.**

If you need any further information, you may call me. Otherwise I look forward to your response.

#### **DEPARTMENT'S RESPONSE:**

Although we cannot answer your specific questions in the context of a General Information Letter, you should find the following information useful.

#### Exemption Identification Number/Exemption Certificate:

Organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification "E- number." See 86 Ill. Adm. Code 130.2007. These E-numbers are valid for five years from issue date and this information is stated on the letter that issues the exemption. This number evidences that this State recognizes that the organization qualifies as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of its organizational purpose. Sales to a governmental body are subject to tax unless the governmental body has an active exemption identification "E-number." See 86 Ill. Adm. Code 130.2080. If an organization or governmental body does not have an "E" number, then its purchases are subject to tax. Only sales to the organization or governmental body holding the "E" number are exempt, not sales to individual members of the organization. Sales to an exempt entity holding an E-number may be documented by retaining a copy of the exemption letter or by recording

the entity's E-number in the sellers books and records. For sales to construction contractors acting on behalf of entities that have been issued E-numbers, please see 86 Ill. Adm. Code 130.2075(d).

Please note that an E-number exempts purchases only under the Retailers' Occupation Tax Act, Use Tax Act, Service Occupation Tax Act, Service Use Tax Act, and local occupation and use taxes. Exemptions involving other taxes are governed by the provisions of those other tax acts.

For a sale to qualify as exempt, because the item is sold to an exempt organization, the seller may not rely on an invalid exemption number, even if accepted in good faith. The burden of sustaining a right to a tax exemption is on the person (retailer) claiming that the purchase is tax exempt. See 86 Ill. Adm. Code 130.2005(r)(3). You may want to review the Department's prior letter rulings on these issues, such as ST-03-0163-GIL, that are available on the Department's internet website. The letter rulings are available to the public for general information purposes on the Department's internet website under the heading of "Laws/Regs/Rulings." In addition, a retailer may contact the Department's Sales Tax Division (217-782-7897) to verify that a Department issued "E-Number" is valid at the time of purchase.

The resale exemption, however, is applicable when making sales to a purchaser who will in turn sell the tangible personal property. See 86 Ill. Adm. Code 130.1405. Except in the case of sales to totally exempt purchasers, when sales for resale are made, sellers should, for their protection, take a Certificate of Resale from the purchaser. Mere statements by sellers that property was sold for resale will not be accepted by the Department without corroborative evidence. Certificates of Resale may be made a part of purchase orders signed by the purchaser. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (i.e., it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided the above stated conditions are met. The retailer's obligation with respect to Certificates of Resale is found at 86 Ill. Admin. Code 130.1401 and 130.1405. The purchaser's registration or reseller number can be verified at the Department's website by clicking on "Businesses" under the "Information For" section and then clicking on the "Business Registration" box or by contacting the Department's Division of Central Registration (217-785-3707).

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois.

Retailers cannot be forced to accept Certificates of Resale. However, as discussed above, a properly executed Certificate of Resale will generally document that the sale by the retailer is a nontaxable sale for resale.

Home Rule Municipal Retailer's Occupation Tax:

In the context of a GIL, the Department will not determine where your sale actually occurs. However, we can direct your attention to the regulations governing the Home Rule Municipal Retailers' Occupation Tax (HRMROT), which are found at 86 Ill. Adm. Code Section 270.101 et seq. A retailer incurs the HRMROT when he makes sales in the course of engaging in the retail business within a home rule municipality. The Department has determined that, in resolving jurisdictional questions, the seller's acceptance of the purchase order is the most important single factor in the occupation of selling. The tax rate is fixed by the location of the seller, not the delivery location. As Section 270.115 indicates, if the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business, the seller incurs HRMROT in that home rule municipality if the sale is at retail and the purchaser or the purchaser's agent receives physical possession of the property in Illinois.

Discount For Prompt Payment:

We cannot advise you regarding your billing methods. However, I direct your attention to Section 130.420 of the Department's regulations governing "Finance or Interest Charges - Penalties - Discounts." As you will see, this regulation explains that if a retailer offers a purchaser a discount based upon prompt payment, and the purchaser pays within the required time period and thus avails himself of the discount, the discounted amount is not includable in the gross receipts subject to Retailers' Occupation Tax. Overcollections of tax by a retailer must either be refunded to the customer or remitted to the Department. Under no circumstances can a retailer keep the overcollected tax.

However, any purchaser who is incorrectly charged more tax than he is legally obligated to pay is entitled to a refund on the amount of excess tax he has paid. Such purchaser must obtain the refund from the seller who incorrectly assessed the tax, not from the Department. Only the seller may obtain a refund from the Department as the seller is the individual who paid tax to the Department. If the seller refunds the erroneously collected tax, he may file a claim for credit with the Department. See, 86 Ill. Adm. Code 130.1501. If the seller is unable to find the purchaser or simply elects not to refund the excess tax collected, such dealer may not file a claim for credit with the Department.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Debra M. Boggess  
Associate Counsel

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